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ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2014-2015

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Lauren L. Damrich

v.

David Brown Damrich

Appeal from Jefferson Circuit Court
(DR-12-900765)

PER CURIAM.

David Brown Damrich ("the husband") and Lauren L. Damrich ("the wife") were married on October 18, 2002. There are no children of the marriage, although the parties have children from previous marriages. On June 28, 2012, the husband filed

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a complaint in the Jefferson Circuit Court seeking a divorce from the wife and a division of the assets and debts of the marriage. The wife filed a counterclaim seeking a divorce from the husband, a division of the assets of the marriage, an order requiring the husband to assume the debts of the marriage, an award of alimony, and an award of attorney fees.

After a hearing, the circuit court entered a pendente lite order on February 25, 2012, which, among other things, required the parties to sell the marital residence and required the husband to pay the wife \$2,000 per month in pendente lite support.

A trial was held on August 16, 2013, and the circuit court entered a final judgment divorcing the parties on October 29, 2013. At that time the marital residence had been sold, but, as noted by the circuit court, there was a "substantial deficit" between the proceeds of the sale and the cost to pay off the remaining mortgage on the marital residence and the other expenses associated with vacating the marital residence. The circuit court included in its findings that "the [wife's] actions contributed considerably to the substantial deficit." Among other things not pertinent to the

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issues on appeal, the circuit court awarded the wife rehabilitative alimony in the monthly amount of \$2,000 for 24 consecutive months and reserved the issue of periodic alimony. It awarded each party one vehicle and allowed the parties possession of the items of personal property that they had agreed upon on lists that the parties had provided. The ownership of each disputed or unspecified item of personal property was specifically addressed in the divorce judgment. The parties were required to pay their own attorney fees.

On November 12, 2013, the wife filed a motion to alter, amend, or vacate the judgment in which she argued that the circuit court had misinterpreted the evidence presented and that its property division and its alimony award were inequitable. On November 18, 2013, the husband filed a motion to alter, amend, or vacate the judgment in which he requested, among other things, an elimination or alteration of the alimony obligation. A hearing on the parties' postjudgment motions was held on January 15, 2014, and, on January 24, 2014, the circuit court entered a judgment slightly altering the property division regarding certain household furnishings and increasing the amount of rehabilitative alimony awarded to

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\$2,500 per month retroactive to November 1, 2013. The wife filed a timely notice of appeal on March 3, 2014. We construe her arguments as arguments seeking this court's review of whether the circuit court erred by failing to order the husband to pay alimony in gross, by failing to award periodic alimony in an amount sufficient to allow her to enjoy the same standard of living that she had enjoyed during the marriage, and by failing to order the husband to pay her attorney fees.

"We begin by noting the appropriate standard of review in divorce proceedings. 'Trial judges enjoy broad discretion in divorce cases, and their decisions are to be overturned on appeal only when they are "unsupported by the evidence or [are] otherwise palpably wrong.'" Ex parte Bland, 796 So. 2d 340, 344 (Ala. 2000) (quoting Ex parte Jackson, 567 So. 2d 867, 868 (Ala. 1990)). Also, when, as in this case, a trial court's judgment is based on ore tenus evidence, the judgment is presumed correct. Kennedy v. Kennedy, 743 So. 2d 487 (Ala. Civ. App. 1999). The presumption of correctness under the ore tenus rule 'is based on the trial court's unique position to observe the witnesses and to assess their demeanor and credibility.' Glazner v. Glazner, 807 So. 2d 555, 559 (Ala. Civ. App. 2001); Hall v. Mazzone, 486 So. 2d 408, 410 (Ala. 1986).

"Matters such as alimony and property division are within the sound discretion of the trial court. Ex parte Drummond, 785 So. 2d 358 (Ala. 2000); Parrish v. Parrish, 617 So. 2d 1036 (Ala. Civ. App. 1993); and Montgomery v. Montgomery, 519 So. 2d 525 (Ala. Civ. App. 1987). The issues of property division and alimony are interrelated, and they must

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be considered together on appeal. Albertson v. Albertson, 678 So. 2d 118 (Ala. Civ. App. 1996).

"In dividing property and awarding alimony, the trial court should consider 'the earning abilities of the parties; the future prospects of the parties; their ages and health; the duration of the marriage; [the parties'] station in life; the marital properties and their sources, values, and types; and the conduct of the parties in relation to the cause of the divorce.' Russell v. Russell, 777 So. 2d 731, 733 (Ala. Civ. App. 2000). Also, the trial court is not required to make an equal division of the marital property, but it must make an equitable division based upon the particular facts and circumstances of the case. Golden v. Golden, 681 So. 2d 605 (Ala. Civ. App. 1996); Brewer v. Brewer, 695 So. 2d 1 (Ala. Civ. App. 1996). 'A property division that favors one party over another does not necessarily indicate an abuse of discretion.' Fell v. Fell, 869 So. 2d 486, 496 (Ala. Civ. App. 2003) (citing Dobbs v. Dobbs, 534 So. 2d 621 (Ala. Civ. App. 1988))."

Williams v. Williams, 905 So. 2d 820, 826-27 (Ala. Civ. App. 2004).

At the time of the trial, the husband was 50 years old and the wife was 49 years old. The husband testified that he was a medical doctor practicing obstetrics and gynecology in Birmingham before and after the parties' marriage, and the wife described herself as a housewife. The parties' joint federal income-tax documents for 2009 through 2012 were admitted into evidence. The husband reported an annual income

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of \$511,878 in 2009, \$461,047 in 2010, \$465,417 in 2011, and \$481,563 in 2012; no income was reported for the wife. The husband projected that his income in 2013 would be less per week than his income in 2012 because he was working one-half day less than he had in 2012 and because he had sold his interest in St. Vincent's Outpatient Surgery Services to pay attorney fees and other bills. He said that his current gross income was \$33,400 per month and that his current net income was \$19,520 per month after he subtracted retirement and income-tax deductions. He offered a list of estimated monthly expenses into evidence indicating an average monthly budget of \$26,370.¹

The wife said that she had a bachelor's degree in public relations and a minor in psychology and that, during the pendency of the divorce proceedings, she had "taken classes to do some substitute teaching." She testified that she had no income. She offered into evidence a list of her estimated monthly expenses, which totaled \$8,961 per month for rent, utilities, food, transportation, clothing, entertainment,

¹The husband's "income and expense sheet" conflated monthly, annual, and temporary expenses. It also appears that a few expenses are represented on more than one line.

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medicine, and pet care. The total did not include monthly payments of approximately \$5,000 on nine debts the wife asserted that she owed.

The husband said that the wife had been an actress, a physical trainer, and a screenwriter. He testified that during the marriage he had not shared in the wife's income, had not known whether she had any income, and had not reported any income of the wife on their joint tax-return documents. According to the husband he had provided \$100,000 for the wife to "live on the beach in Santa Monica" for three to six months per year during the last five years of the marriage so that the wife and her daughter could pursue careers in acting and screenwriting. The wife denied that she had lived in a beach house, but she admitted that the husband had provided the funds that she and her children had used to live in California and New York for extended periods, to pursue their careers, during the last four or five years of the marriage.

The parties testified that they had each had owned real property before the marriage. The husband said that they had both used the proceeds from the sales of those properties to purchase the marital residence, which was valued at \$450,000

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before it was renovated. He said that he had contributed approximately \$90,000 from the sale of a property he had owned before the marriage and that the parties had acquired a \$360,000 mortgage on the marital residence. Due to a series of events during the renovation of the marital residence into a 7,000-square-foot home, the husband had acquired a "half million dollar bridge loan" in his name. The husband said that he had acquired another loan in his name in the amount of \$300,000 to finish the renovations. He agreed that he had spent \$1,060,000 on the marital residence with the unrealized expectation that it would have an appraised value of \$1,990,000. Instead, the finished marital residence had an appraised value only as high as \$1,700,000. He testified that the wife had contributed approximately \$132,000 toward the mortgage debt when she sold a property she had owned before the marriage; the wife said she had contributed \$158,950.

While the marital residence was listed for sale, the husband moved out of the marital residence and the wife, her children, and her dogs lived in the marital residence. The husband testified and offered into evidence several e-mail messages from the parties' realtor indicating that the marital

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residence was showing poorly because the marital residence was "a total mess," which had resulted in fewer showings and, eventually, a lower asking price. The wife testified that she had not read all the numerous e-mail messages from the realtor that had included potential buyers' feedback because she was too sick, too busy, or too depressed to do so. Julie Tuck, the wife's best friend, testified that the marital residence was clean, but she admitted that she had seen dog hair on the rugs and floors and dog feces on the driveway. The husband testified and offered into evidence photographs indicating that, once the house sold, the wife left the marital residence in a damaged and extremely unclean condition; the wife said that she was in the hospital at the time the photographs were taken and that her children and dogs had caused the "disarray." The husband incurred debts for additional repairs, for extensive cleaning, and for movers to remove items left in the marital residence. The wife did not deny that she had left the marital residence in an unlivable condition, but she said that she had been too sick to do otherwise. Tuck said that the wife was sick, depressed by the thought of the divorce, and could not "function."

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Regarding the "substantial deficit" noted by the circuit court, the testimony indicated that on the date of the closing the parties owed \$1,400,000 on the mortgage and that the marital residence sold for \$1,100,000, although it had once had an appraised value as high as \$1,700,000. It is undisputed that the husband spent \$331,439 for repairs, professional cleaning, closing costs, realtor's commission, and other fees and that the wife did not contribute to those expenses. The husband said that, to meet that financial obligation, he had incurred credit-card debt and had acquired a loan for which he was obligated to make a monthly payment of \$5,451 for seven years. The husband requested a judgment requiring the wife to evenly split the \$331,439 expense.

The husband said that he took "twelve pills a day." He said: "I take Lymetsa [(sic)] -- I take diabetes medicine, cholesterol medicine, high blood pressure medicine. I take botanics." He said that he was treated for kidney stones once or twice a year. The husband said that the wife suffered from and took "a lot of medication" for depression, anxiety, attention-deficit/hyperactivity disorder, and post-traumatic stress disorder. The wife said that she had also experienced

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shingles, insomnia, stomach ulcers, erratic blood pressure, weight loss, hair loss, and chest pains.

The wife testified that the husband was at fault for the breakdown of the marriage. The wife said that the husband had a temper, used profanity, called her names, and told her that everyone might be "better off" if she were dead. The wife said that she had not had a sexual relationship with the husband during the last year of the marriage and that during discovery she had confirmed that the husband began "dating" and taking the prescription medication Viagra shortly before he filed the complaint seeking a divorce. The husband admitted that he was engaged in a sexual relationship with a coworker that began after the parties had separated; however, the husband said that the wife was at fault for the breakdown of the marriage because the wife was away from home with her children too frequently and for too long and that the marriage lacked intimacy; he agreed that they had not had a sexual relationship for one year. He said that during discovery he had learned that the wife had \$18,000 in a banking account of which he had not been aware. The wife said that the funds were derived from her inheritance. She offered confused,

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conflicting testimony regarding the banking account and the amount it contained, but she disputed that the husband had not known about the account.

The wife presents a three-part argument regarding her first issue -- that the circuit court erred by failing to compensate her with an award of alimony in gross for her contribution of \$158,950 from her separate estate toward the expense of the marital residence. In essence, she argues that the circuit court unfairly based its judgment on its conclusion that the wife had contributed considerably to the "substantial deficit" incurred as a result of the sale of the marital residence. Specifically, the wife asserts that the circuit court erred (1) by concluding that the husband presented evidence indicating that she had contributed considerably to the substantial deficit, (2) by concluding that the husband had not misused her \$158,950 contribution, and (3) by fashioning an inequitable property division.

In support of her first subargument, the wife cites cases standing for the proposition that this court is not required to give deference to a trial court's determination when there is "no evidence" to support its determination.

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See, e.g., Williams, 905 So. 2d at 826. The wife asserts that the husband did not allow her to have any input into the renovations to the marital residence, that he mishandled the renovations, and that she had contributed the \$158,950 because the husband had told her to do so. Regardless, we do not agree that there was no evidence presented that the wife contributed to the substantial deficit. Even if we agreed that there was no evidence before the circuit court indicating that any action of the wife contributed to the expense of the renovations to the marital residence, plenty of testimony and documentary evidence before the circuit court indicated that the wife failed to cooperate with the realtor or to make the marital residence presentable to potential buyers, which certainly resulted in a lower asking price and, therefore, contributed to the substantial deficit. "Trial judges enjoy broad discretion in divorce cases, and their decisions are to be overturned on appeal only when they are 'unsupported by the evidence or [are] otherwise palpably wrong.'" Ex parte Bland, 796 So. 2d 340, 344 (Ala. 2000) (quoting Ex parte Jackson, 567 So. 2d 867, 868 (Ala. 1990)). The circuit court did not err

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by determining that there was evidence demonstrating that the wife had contributed to the substantial deficit.

The wife next argues that the circuit court erred by failing to compensate her for her \$158,950 contribution because, she says, like the husband in Kiel v. Kiel, 51 So. 3d 1058 (Ala. Civ. App. 2010), the husband in this case "misused" her contribution. The wife in Kiel had inherited \$300,000, and the parties had placed the funds in their joint banking accounts. 51 So. 3d at 1060. Thereafter, the husband in that case engaged in an adulterous relationship and spent the wife's inheritance on expensive gifts and vacations with his paramour. Id. at 1061.

Kiel is clearly distinguishable. In this case the proceeds from the sale of the wife's separate property were used to pay a debt on the marital residence, in which the wife and her children lived for nearly nine years. That use is not remotely similar to the misuse in Kiel. Moreover, the facts that the husband contributed \$90,000 from the sale of his separate property, that there was no equity in the marital residence at the time of its sale, and that the circuit court made the husband responsible for all the joint marital debts

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in the amount of \$331,439 further distinguish this case from Kiel and weaken the wife's argument. As we often repeat, the circuit court is the best position to determine the credibility of the testimony presented. Thus, even if we believed the wife's assertion that the husband had misused her contribution, which we do not, we would not substitute our judgment for that of the circuit court. See Ex parte Drummond, 785 So. 2d 358, 363 (Ala. 2000).

The wife's final subargument -- that the circuit court erred by fashioning an inequitable property division -- is equally unpersuasive. "[P]roperty divisions are not required to be equal, but must be equitable in light of the evidence, and the determination as to what is equitable rests within the sound discretion of the trial court." Morgan v. Morgan, 686 So. 2d 308, 310 (Ala. Civ. App. 1996) (quoting Duckett v. Duckett, 669 So. 2d 195, 197 (Ala. Civ. App. 1995)). The wife argues that she contributed \$158,950 and the "husband only contributed a payment of \$90,000 on the marital residence." Although she concedes that the circuit court made the husband responsible for the entire joint marital debt, she says the error regarding her larger contribution is compounded by the

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circuit court's award to the husband of four automobiles, its award to the husband of the sums in five checking accounts, and the facts that the husband had a lucrative career and a well-funded retirement account. By contrast, the wife argues, the circuit court awarded her one vehicle and the funds in one banking account.

The wife does not (and indeed cannot) cite authority supporting her argument that, in light of the husband's responsibility for the entire joint marital debt, the property division is inequitable. Furthermore, the judgment did not award the husband four automobiles; it awarded him a Tahoe vehicle, upon which, the husband said, seven payments remained at the time of the trial. The other vehicles to which the wife refers are the vehicles that the husband gave his children. Those vehicles were not specifically included in the divorce judgment. There was no remaining indebtedness on the two vehicles that the husband had given to his two daughters, and the husband said that he was obligated to make monthly payments of \$1,000 for 23 months to his former wife's husband to purchase his former wife's Range Rover for their son. Rather than awarding the husband that vehicle, the

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divorce judgment made the husband responsible for all the debts in the husband's name, which included the debt on the Range Rover vehicle. The wife also complains that the divorce judgment awarded the husband the funds in five checking accounts. We note that three of those checking accounts are checking accounts that were jointly owned by the husband and each one of his children, respectively. The husband said that he attempted to keep a relatively low balance of \$500 to \$1,000 in those three accounts for his children's use. We conclude that, under the facts of the case, the circuit court's determination regarding the property division was not an abuse of its sound discretion. "In examining whether the trial court's property division amounts to an abuse of its discretion, the proper question to be resolved is whether the property division was equitable under the facts of the case." Sumerlin v. Sumerlin, 964 So. 2d 47, 49 (Ala. Civ. App. 2007) (citing Golden v. Golden, 681 So. 2d 605 (Ala. Civ. App. 1996)).

The wife's second issue on appeal is whether the circuit court erred by failing to award periodic alimony in an amount sufficient to allow her to enjoy the same standard of living

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that she had enjoyed during the marriage. The circuit court awarded the wife rehabilitative alimony in the amount of \$2,500 for 24 months. Rehabilitative alimony is a subclass of periodic alimony. See Enzor v. Enzor, 98 So. 3d 15, 21 (Ala. Civ. App. 2011). The purpose of rehabilitative alimony is to allow a spouse to begin or to resume supporting himself or herself. Alfred v. Alfred, 89 So. 3d 786 (Ala. Civ. App. 2012); Enzor v. Enzor, 98 So. 3d 15, 21 (Ala. Civ. App. 2011).

At the time of the divorce trial, the wife was 49 years old, and the parties had no children together. During the marriage the wife and her children enjoyed a luxurious lifestyle. It is undisputed that the husband earned a net monthly income of nearly \$20,000, that the wife and her children lived in 7,000-square-foot home in Mountain Brook, and that the husband paid all of the wife's living expenses, including providing for the wife and her daughter to pursue careers in the entertainment industry in California and New York. The wife, who had a college degree, testified to several health issues, but she does not allege that those issues restricted her ability to work.

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In Clore v. Clore, 135 So. 3d 264, 271 (Ala. Civ. App. 2013), we affirmed a trial court's award of 18 months of rehabilitative alimony in the amount of \$800 per month although the wife in that case had estimated monthly expenses of over \$4,000. The trial court expressed its determination that the wife's expenses were inflated, and we noted that the relatively healthy, educated wife had not found employment during the pendency of the divorce proceedings and had subsisted on the matching pendente lite award, which, we observed, indicated her ability to do so in the future. Although, like the circuit court in this case, we express no opinion on whether the wife in this case has inflated her estimated monthly living expenses, we note that she is similarly situated to the wife in Clore because the wife in this case is also relatively healthy, well educated, and, despite her testimony that she had sold two screenplays for a total of \$2,500 in unreported income in two years, had not found employment.

Furthermore, as we explained in J.D.A. v. A.B.A., 142 So. 3d 603, 614-15 (Ala. Civ. App. 2013):

"[T]he wife's estimation of the amount of periodic alimony that was required to guarantee her the same

standard of living that she had enjoyed during the marriage ignored 'the impact [that] an award of periodic alimony [would] have on the financial condition of the [husband] and his ... ability to maintain the parties' former marital lifestyle for himself.' Shewbart v. Shewbart, 64 So. 3d 1080, 1088 (Ala. Civ. App. 2010) (citing O'Neal v. O'Neal, 678 So. 2d [161] at 164 (Ala. Civ. App. 1996)) (emphasis added). 'In considering the [husband's] ability to pay [periodic alimony], the trial court should take into account all the financial obligations of the [husband], including those obligations created by the divorce judgment.' Id."

The circuit court properly took into account preserving the husband's former standard of living, in light of his financial obligations, along with preserving the wife's former standard of living. In this case the husband estimated his monthly net income at \$19,520. Our reading of the document listing the husband's estimated monthly expenses (see note 1, supra) reveals that the husband indicated that he had approximately \$4,500 in living expenses ($\$19,520 - \$4,500 = \$15,020$). The judgment divorcing the husband from his first wife required him to pay \$1,000 per month in child support for his son and \$2,530 in living expenses for his daughters who were in college ($\$15,020 - \$3,530 = \$11,490$).² The husband

²The judgment divorcing the husband from his first wife is included in the record, and it reveals that the husband was contractually obligated to pay 100% of his children's expenses

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expended approximately \$2,280 to provide cellular-telephone service and automobile insurance, maintenance, and taxes for

when they entered college. At the time of the trial, two of the husband's children were enrolled at the University of Alabama. We have not included tuition costs as part of the husband's expenses because the husband indicated that he derived the funds for his payment of that expense from 529 college-savings accounts that he had funded in the past and because testimony indicated that one of the daughters had a full scholarship.

The wife argues that the husband's payment of his daughters' sorority expenses and "living expenses" amount to gratuitous undertakings that may not be considered by a trial court in fashioning an alimony award. See Sosebee v. Sosebee, 896 So. 2d 557, 562 (Ala. Civ. App. 2004).

First, the husband's estimated-monthly-expense sheet appears to indicate that he paid the daughters' sorority expenses and "extra" expenses from funds in the 529 accounts that he had funded in the past; however, we have included those expenses (in the total amount of \$2,530) out of an abundance of caution. If the husband pays those expenses from his monthly income and if we were to assume, without deciding, that those expenditures are gratuitous undertakings, we would not include \$2,530 as part of the husband's monthly expenses, and the husband would have a shortfall of \$1,711, rather than \$4,241, between his monthly income and his monthly expenses. Thus, regardless of whether the wife is correct, applying the holding of Sosebee would not alter our conclusion as to this issue. (The wife also argues that the husband's payment of the children's cellular-telephone expenses are additional gratuitous undertakings; however, a subtraction of that expense would, likewise, not alter our conclusion. Furthermore, we note that the wife included a cellular-telephone expense of \$175 on her list of living expenses.)

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himself and his children ($\$11,490 - \$2,280 = \$9,210$).³ The divorce judgment obligated the husband to pay the entire marital debt in the amount of $\$5,451$ per month ($\$9,210 - \$5,451 = \$3,759$), and it obligated the husband to pay the wife $\$2,500$ in rehabilitative alimony ($\$3,759 - \$2,500 = \$1,259$). From the remaining $\$1,259$, the husband will have to pay his listed expenses for life insurance, medical insurance, attorney fees, credit-card debt, and country-club dues in the approximate amount of $\$5,500$, leaving a monthly deficit of $\$4,241$. Thus it appears that, although the husband had a substantially higher earning capacity than the wife, his standard of living following the divorce will also be curtailed. Gates v. Gates, 830 So. 2d 746, 750 (Ala. Civ. App. 2002) (citing O'Neal v. O'Neal, 678 So. 2d 161, 164 (Ala. Civ. App. 1996)) (recognizing the "classic financial morass" encountered upon divorce and explaining that the phrase to "to the extent possible," in the context of fashioning a periodic-alimony award, recognizes that both parties will have to live

³We have not included the husband's claimed $\$1,128$ automobile payment because he testified that he was within seven months of paying off that expense at the time of the trial.

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on substantially less income). Therefore, given the facts of this case and noting that issues of property division and alimony must be considered together, we conclude that the wife has not demonstrated that the circuit court erred in awarding the wife rehabilitative alimony in the amount of \$2,500 for 24 months and reserving the issue of periodic alimony.

Finally, the wife cites Allen v. Allen, 53 So. 3d 960 (Ala. Civ. App. 2010), in support of her last issue on appeal -- whether the circuit court erred by failing to order the husband to pay her attorney fees.⁴ However, as we explained in Glover v. Glover, 678 So. 2d 174, 176 (Ala. Civ. App. 1996),

"[w]hether to award an attorney fee in a domestic relations case is within the sound discretion of the trial court and, absent an abuse of that discretion, its ruling on that question will not be reversed. Thompson v. Thompson, 650 So. 2d 928 (Ala. Civ. App. 1994). 'Factors to be considered by the trial court when awarding such fees include the financial circumstances of the parties, the parties' conduct, the results of the litigation, and, where appropriate, the trial court's knowledge

⁴In Allen, we reversed the judgment and remanded the cause when the trial court failed to award attorney fees to the wife in that case who suffered from three forms of cancer, kidney disease, chronic obstructive pulmonary disease, diabetes, and depression; she received the "meager" amount of \$600 per month in disability benefits. 53 So. 3d at 963, 966.

and experience as to the value of the services performed by the attorney.' Figures v. Figures, 624 So. 2d 188, 191 (Ala. Civ. App. 1993). Additionally, a trial court is presumed to have knowledge from which it may set a reasonable attorney fee even when there is no evidence as to the reasonableness of the attorney fee. Taylor v. Taylor, 486 So. 2d 1294 (Ala. Civ. App. 1986)."

The circuit court had the discretion to decide whether to require the husband to pay the wife's attorney fees. We will not reverse the circuit court's discretionary decisions unless we are convinced that it ""committed a clear or palpable error, without the correction of which manifest injustice will be done."" D.B. v. J.E.H., 984 So. 2d 459, 462 (Ala. Civ. App. 2007) (quoting Clayton v. State, 244 Ala. 10, 12, 13 So. 2d 420, 422 (1942), quoting in turn 16 C.J. 453). The circuit court did not commit reversible error by not awarding the wife attorney fees.

For the reasons expressed in this opinion, the circuit court's judgment is affirmed. The husband's and the wife's requests for awards of attorney fees on appeal are denied.

AFFIRMED.

Pittman, Thomas, Moore, and Donaldson, JJ., concur.

Thompson, P.J., concurs in part and dissents in part, with writing.

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THOMPSON, Presiding Judge, concurring in part and dissenting in part.

The trial court awarded Lauren L. Damrich ("the wife") rehabilitative alimony in the amount of \$2,500 a month for two years and reserved the issue of periodic alimony. I believe that, given the facts of this case, the trial court abused its discretion by refusing to award the wife periodic alimony from the outset.

Rehabilitative alimony and periodic alimony serve two distinct purposes. Rehabilitative alimony is intended to provide support for a dependent spouse for a limited period of reeducation or retraining following a divorce so that the dependent spouse may gain skills to become self-sufficient. Enzor v. Enzor, 98 So. 3d 15, 21 (Ala. Civ. App. 2011). Periodic alimony, on the other hand,

"'is an allowance for the future support of the [recipient spouse] payable from the current earnings of the [paying spouse].' [Hager v. Hager], 293 Ala. [47] at 55, 299 So. 2d [743] at 750 [(1974)]. Its purpose 'is to support the former dependent spouse and enable that spouse, to the extent possible, to maintain the status that the parties had enjoyed during the marriage, until that spouse is self-supporting or maintaining a lifestyle or status similar to the one enjoyed during the marriage.' O'Neal v. O'Neal, 678 So. 2d 161, 164 (Ala. Civ. App. 1996) (emphasis added)."

TenEyck v. TenEyck, 885 So. 2d 146, 152 (Ala. Civ. App. 2003).

I recognize that "[t]he phrase from O'Neal, 678 So. 2d at 164 [quoted above in TenEyck], 'to the extent possible' recognizes that both former spouses will have to live on substantially less income" after a divorce. Gates v. Gates, 830 So. 2d 746, 750 (Ala. Civ. App. 2002). There are a number of factors a trial court must consider when determining whether to award periodic alimony.

"In exercising its discretion, the trial court is guided by equitable considerations. See Killingsworth v. Killingsworth, 925 So. 2d 977, 983 (Ala. Civ. App. 2005). This court and our supreme court have enumerated the many factors trial courts must consider when weighing the propriety of an award of periodic alimony, Edwards v. Edwards, 26 So. 3d 1254, 1259 (Ala. Civ. App. 2009), which include: the length of the marriage, Stone v. Stone, 26 So. 3d 1232, 1236 (Ala. Civ. App. 2009); the standard of living to which the parties became accustomed during the marriage, Washington v. Washington, 24 So. 3d 1126, 1135-36 (Ala. Civ. App. 2009); the relative fault of the parties for the breakdown of the marriage, Lackey v. Lackey, 18 So. 3d 393, 401 (Ala. Civ. App. 2009); the age and health of the parties, Ex parte Elliott, 782 So. 2d 308, 311 (Ala. 2000); and the future employment prospects of the parties, Baggett v. Baggett, 855 So. 2d 556, 559 (Ala. Civ. App. 2003). In weighing those factors, a trial court essentially determines whether the

petitioning spouse has demonstrated a need for continuing monetary support to sustain the former, marital standard of living that the responding spouse can and, under the circumstances, should meet. See Gates v. Gates, 830 So. 2d 746, 749-50 (Ala. Civ. App. 2002); Hewitt v. Hewitt, 637 So. 2d 1382, 1384 (Ala. Civ. App. 1994) ("The failure to award alimony, although discretionary, is arbitrary and capricious when the needs of the wife are shown to merit an award and the husband has the ability to pay.").

Rieger v. Rieger, 147 So. 3d 421, 429-30 (Ala. Civ. App. 2013) (quoting Shewbart v. Shewbart, 64 So. 3d 1080, 1087-88 (Ala. Civ. App. 2010)).

The record in this case indicates that the parties had been married just 4 months short of 10 years when the husband filed the complaint for a divorce and that by the time of the trial they had been married almost 11 years. Each party blamed the other for the breakdown of the marriage. The wife testified that she and David Brown Damrich ("the husband") had not had a sexual relationship for more than a year before the divorce complaint was filed, but she discovered that the husband had been "dating" and taking the prescription medication Viagra before filing the complaint. The husband testified that the wife had caused the breakdown of the

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marriage because of her long absences from the home. However, he did admit that he was in a sexual relationship with a co-worker at the time of the trial. From the record, it appears that neither party is blameless in the collapse of the marriage. The husband, who was 50 years old at the time of trial, is a physician whose annual gross income for the 5 years preceding the trial was between approximately \$461,000 and \$511,000, and he testified that his net monthly income is approximately \$19,520. The wife, who was 49 at the time of trial, holds a bachelor's degree, but she described herself as a housewife during the marriage. The husband has a substantially higher earning capacity than the wife, one which the wife would not be able to approach even if she were to use the two years worth of rehabilitative alimony on nothing but obtaining skills to make her self-sufficient. Excluding certain personal debts, the wife estimated her monthly expenses at \$8,961.

In the words of the main opinion, the wife may be able to "subsist" on the \$2,500 monthly rehabilitative alimony, ___ So. 3d at ___, but her standard of living will be drastically curtailed from the lifestyle she maintained during her 10-year

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marriage to the husband. Admittedly, the husband has monthly expenses that must be taken into account when considering an award of periodic alimony to the wife. However, by refusing to award the wife periodic alimony, the trial court has essentially allowed the husband to retain the standard of living he enjoyed during the marriage while providing the wife with enough money to "subsist" for two years, after which she might receive no alimony at all.

In concluding that the wife is entitled to receive periodic alimony, I do not mean to imply that the alimony must meet the wife's financial needs. However, based on the husband's significant monthly salary, the disparity between not only the parties' incomes but their respective earning capacities, see Jones v. Jones, 596 So. 2d 949, 952 (Ala. Civ. App. 1992), and the length of the marriage, I believe that the trial court's failure to award the wife any periodic alimony constitutes an abuse of discretion. Therefore, I would reverse that portion of the judgment awarding the wife only rehabilitative alimony.

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I would also reverse that portion of the trial court's judgment denying the wife an attorney fee. As the main opinion points out,

"[w]hether to award an attorney fee in a domestic relations case is within the sound discretion of the trial court and, absent an abuse of that discretion, its ruling on that question will not be reversed. Thompson v. Thompson, 650 So. 2d 928 (Ala. Civ. App. 1994). "Factors to be considered by the trial court when awarding such fees include the financial circumstances of the parties, the parties' conduct, the results of the litigation, and, where appropriate, the trial court's knowledge and experience as to the value of the services performed by the attorney." Figures v. Figures, 624 So. 2d 188, 191 (Ala. Civ. App. 1993). Additionally, a trial court is presumed to have knowledge from which it may set a reasonable attorney fee even when there is no evidence as to the reasonableness of the attorney fee. Taylor v. Taylor, 486 So. 2d 1294 (Ala. Civ. App. 1986).'

"Glover v. Glover, 678 So. 2d 174, 176 (Ala. Civ. App. 1996)."

Frazier v. Curry, 104 So. 3d 220, 228 (Ala. Civ. App. 2012).

In this case, the husband sought the divorce. Evidence indicates that he had been "dating" before filing the divorce complaint. Other evidence indicated that the husband had encouraged the attempts by the wife and her daughter to pursue

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careers in the entertainment industry. The husband testified that he did not know whether the wife had earned any income during the marriage, but the parties had not reported any income for the wife on the parties' joint income-tax returns. The husband has substantially more assets than the wife from which to pay the attorney fee. Based on the record, I would reverse that portion of the judgment denying the wife an attorney fee and, on remand, instruct the trial court to revisit the issue of an attorney fee in light of an award of periodic alimony.

For the above reasons, I dissent from those portions of the main opinion affirming the trial court's decision to award the wife only rehabilitative alimony instead of periodic alimony and denying the wife an attorney fee. I concur with the remainder of the main opinion.